ACCESS TO JUSTICE

A RESPONSE TO THE REPORT OF THE JUSTICE REFORM COMMITTEE BY THE GOVERNMENT OF BRITISH COLUMBIA

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Victoria, British Columbia
May 9, 1989

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TABLE OF CONTENTS

INTRODUCTION 1
- Constitutional Responsibilities 1
- Mandate 1
- Statement of Principles 2

JUSTICE REFORM COMMITTEE 3

AN UNDERSTANDABLE JUSTICE SYSTEM 5

EXPANDED ACCESS TO THE COURTS 7

ENHANCED PROSECUTION AND ENFORCEMENT EFFORTS 9

FAMILY LAW 13

HELPING PEOPLE WITH SPECIAL NEEDS 17

TECHNOLOGY, EVALUATION AND MANAGEMENT INFORMATION 19

FEES AND COSTS 23

CASE MANAGEMENT 25

ONGOING LAW REFORM 27

SHARED RESPONSIBILITY 29

INTRODUCTION

The Government's response to the Report of the Justice Reform Committee, Access to Justice, provides the policy direction for the Ministry of Attorney General for the coming years. The specific legislative and program initiatives are in keeping with the Ministry's constitutional responsibilities, its mandate and the principles which underlie its operations.

Constitutional Responsibilities

In Canada, constitutional responsibility for the justice system is shared by the federal and provincial governments. The federal government legislates criminal law and procedures, the laws relating to divorce, immigration, admiralty matters, bankruptcy and interprovincial trade and commerce. It is also responsible for appointing Superior Court judges and for prosecuting drug offences.

The provinces are responsible for the administration of justice, including the operation of all the courts, the prosecution of criminal code offences and the appointment of Provincial Court judges. Provinces are also responsible for civil law, including family law matters, other than divorce.

Mandate

The Ministry of Attorney General has particular responsibility for:

- providing legal advice to the Government, including the drafting of laws, and representing the Crown in legal proceedings;
- prosecuting criminal and Provincial statute offences;
- administering the court and judicial system;
- protecting the legal and financial interests of persons who are unable to look after their own affairs (Office of the Public Trustee);
- registration of land ownership (Land Titles Office).

In addition, the Attorney General has a broader responsibility for ensuring that the rights of British Columbians are protected in their dealings with the justice system and that they understand their responsibilities in relation to it. In order to achieve this, the Ministry funds community based programs which provide public legal education, legal aid, native court workers, and, in cooperation with the Ministry of Solicitor General, services for victims of crime.

Principles

The following statement of principles governs the Ministry of Attorney General:

- RESPECT FOR THE RULE OF LAW
  All Ministry activities must be conducted in such a way as to ensure that respect for the rule of law is seen as a core value, and as a fundamental principle in society.
- INTEGRITY
  The justice system must be above reproach with respect to how it treats those who deal with it. People must be treated equally, fairly and with regard to their human dignity and civil rights.
- QUALITY
  The Ministry seeks to set a standard of excellence in the performance of all work so that it is done skillfully, economically, and in a timely manner.
- SHARED RESPONSIBILITY
  The pursuit of justice is a shared responsibility between the justice system, communities and individuals. It is of prime importance that individuals and communities understand their roles and responsibilities for keeping the peace, protecting themselves and resolving disputes.
- RESPONSIVENESS
  The Ministry's structures and services must be responsive to the current needs of people. The intent is to ensure that the justice system is able to deal with today's problems in a manner which reflects regional needs and uses regional resources.
- MINIMAL INTERVENTION
  The justice system should adhere to the principle of minimal intervention. This means that the degree to which the justice system intervenes in the lives of citizens should represent the least intrusion sufficient to preserve public order and protect individuals and property.
- PREVENTION
  To be proactive in preventing unlawful activities, public disorder and the escalation of disputes is preferable to being reactive to crime and disorder and to using the force of law to punish.
- VALUE
  The Ministry is committed to the concept of best value; that is, to ensure the resources provided by the taxpayer are used to give the very best value for the money in terms of performance and productivity.

JUSTICE REFORM COMMITTEE

The Justice Reform Committee was appointed by the Provincial Government in November, 1987. Its purpose was to recommend changes which would make the justice system of British Columbia more accessible, understandable, relevant and efficient.

Following public hearings in 9 communities throughout the Province at which it heard 175 presentations and received 200 briefs, the report was released on December 1, 1988. The report's dominant theme is reflected in its title, Access to Justice. The 182 recommendations are intended to result in a justice system that is fairer and more accessible to all British Columbians.

After receiving the Justice Reform Committee's report, the Attorney General, Bud Smith, toured the province in December and January to discuss its recommendations with the public and members of the legal community. In addition, over 100 written responses were received by the Attorney General. Response to the report has been very positive.

In January, 1989, the Attorney General established an advisory committee on implementation of legal and procedural reforms. The committee is comprised of judges from the Provincial, County and Supreme Courts and lawyers from various parts of the Province. The committee has been instrumental in providing the Attorney General with advice on the implementation of the report's recommendations, particularly as they relate to the structure and operations of the courts and of court procedures.

Following this extensive review and consultation process, the Government is announcing its response to the report and the policy direction for the Ministry.

AN UNDERSTANDABLE JUSTICE SYSTEM

The justice system belongs to the people and its purpose is to serve them. Law, legal documents, and legal procedures, which touch everyone, should be understandable and accessible. The language used in legal writing has not kept pace with the changes in the English language over the last 100 years. Many people face a language barrier as they attempt to understand and use the justice system.

The public needs to have information about the justice system and the law. British Columbia is recognized across Canada as a leader in providing legal information to its citizens through a variety of innovative programs. Schools, community organizations and volunteers have formed a strong partnership with the government in providing this information. An enhanced effort will be made to reach those people who live outside the lower mainland as well as those whose first language is not English.

The following steps are planned:

- **A government-wide plain language initiative will begin in 1989.**

  A senior level plain language committee will be appointed to develop strategies for implementing a government-wide plain language policy and to provide leadership in this area to the private sector.

  The Ministry will immediately review and redesign forms and documents the public uses in Small Claims Court, Office of the Public Trustee and the Family Maintenance Enforcement Program.

- **Simplified mortgage and conveyancing documents will be introduced.**

  The Land Titles Branch is revising the form of conveyancing and mortgage documents to incorporate the plain language principle. Supporting legislation will be introduced late in the Spring, 1989 session.

- **A province-wide toll-free network for legal information will be established in 1990.**

  A telephone service will be developed to provide the public with simple, quick and free access to information on legal topics and legal services available.

- **Joint curriculum development with the Ministry of Education will continue.**

  The Ministry will participate in ensuring that students receive information on the law and the justice system through cooperative projects with the Ministry of Education.

- **Public legal education programs will be expanded.**

  The Law Courts Education Program currently operating in Vancouver will be expanded over the next three years to all court regions. Core programming includes school programs (tours, mock trials, curriculum) and programs for special groups (e.g. native people, multicultural groups).

  The Ministry, in cooperation with the federal Department of Justice, will fund a legal education program for multicultural communities in outlying areas. The Public Legal Education Society will initially establish this service in 10 communities and as these become self-sufficient, additional communities will be added.

  A program combining legal information with functional literacy training will be piloted in Vancouver. Based on the results, expansion of the program to a second urban centre is planned.

  Self-service video programs will be developed for use in courts for witness orientation and other educational needs. The witness videos will be available to Crown Counsel offices and community agencies.

EXPANDED ACCESS TO THE COURTS

In Canadian society, the courts are the final arbiters of criminal, civil and family disputes. It is ultimately the courts to which we turn in order to protect our rights. Their decisions affect every British Columbian.

The Province's court structure has not changed significantly since1885 when three levels of trial courts, Small Debts Court (now the Small Claims Division of the Provincial Court), County Court and Supreme Court existed in much the same form as they do today.

Although governments have continued to respond to demands on the courts by providing additional judges, courtrooms and resources, the capacity of the system to respond to the volume and complexity of criminal and civil cases is seriously challenged. Particularly in the Lower Mainland, the rapid growth in civil litigation has put tremendous pressure on the court system. The result is delays, increased costs to litigants and, for many, limited access to the court system intended to serve them.

The justice system must respond by seeking ways to speed up and simplify the court process and increase access throughout the Province while ensuring the principles of justice are protected. Specific steps being taken are:

- **Supreme and County Courts will be merged into one Supreme Court of British Columbia by July 1, 1990.**

  The merged court will provide resident Supreme Court judges in nine regions of the province. This will ensure increased access to the highest trial court in British Columbia for those living outside the lower mainland. It will also remove public confusion which results from the overlapping jurisdictions of the Supreme and County Courts.

- **Additional Masters will be appointed to free up judges to do trial work in 1989.**

  Masters are lawyers appointed by the Province to perform some of the work normally done by Superior Court judges such as chambers applications, and other pre-trial matters. There is now only one in British Columbia and the addition of several more will free up judges to do trial work.

  Masters will travel on circuit to all areas of the province where Supreme Court matters are heard. This will increase access to the courts, particularly in family matters where masters will hear pre-trial applications.

  Masters will have the authority to deal with all chamber matters which do not involve final orders as well as work performed by Registrars.

- **A new Small Claims Act will be introduced in 1989.**

  The Small Claims Court process is designed to allow people to pursue claims on their own, without a lawyer.

  The new Small Claims Act, its rules and forms will be drafted in plain language. The jurisdiction of the Court will be increased from $3,000 to $5,000. The responsibility for handling security deposit disputes will be moved from the Small Claims Court to the Ministry of Labour and Consumer Services. Enforcement procedures will be simplified.

- **An Economical Litigation Program will be introduced in the Supreme Court by July 1, 1990.**

  There is a range of claims between $5,000 and $20,000 which are not being pursued in the courts. It is often uneconomical to hire a lawyer for these amounts and current procedures are not tailored for people who want to represent themselves in court.

  The rules will be changed so that simple cases will be treated simply. Forms will be in plain language. Trials will be shorter and less formal. Settlement will be encouraged at compulsory pre-trial conferences. Pre-trial discovery conferences will only be allowed with the court's permission.

- **Court and registry hours will be expanded in high volume Family and Small Claim Court locations on a trial basis in 1989.**

  In Small Claims and Family Courts, it is particularly important that alternatives to the usual court hours be provided to the public to prevent their loss of work time. Two pilot projects will be evaluated to determine public interest and need prior to expansion of extended hours to other high volume locations.

- **Alternate methods of dispute resolution (ADR) will be examined and encouraged.**

  Existing ADR programs will be evaluated to determine their suitability for expansion. The Ministry of Attorney General will work with universities, mediation groups, the bar and the bench to promote using and improving existing ADR resources and to expand their availability.

  ADR holds the promise of reducing the amount of litigation before the courts and providing an alternate means of resolving disputes for the public and the business community.

ENHANCED PROSECUTION AND ENFORCEMENT EFFORTS

The vigorous and fair enforcement of the law is of fundamental importance to British Columbians. While the content of the Criminal Code is the responsibility of the federal government, provinces are responsible for the prosecution of criminal cases at all levels of court.

In British Columbia, Crown Counsel decide what charges brought forward by the police or other enforcement agencies will be prosecuted. In making that choice, Crown Counsel consider two factors: the public interest in laying the charge and the likelihood of conviction.

Criminal cases are becoming more complex and difficult to prosecute. The Charter of Rights and Freedoms, federal legislation and an emphasis on the rights of accused, victims and witnesses are placing new demands on prosecutors. Increased reporting of sexual abuse and an emphasis on commercial and organized crime and youth gangs require specialized prosecutorial resources. The criminal justice system must have the resources necessary to provide adequate services to victims and witnesses and to increase the effectiveness of prosecutions and the efficiency of criminal court procedures.

While the enforcement of the criminal law is essential to the maintenance of order in our society, so is the enforcement of provincial and municipal laws. The Crown must ensure that offences which are regulatory in nature (e.g. protection of the environment) are enforced uniformly and effectively and that the sanctions applied, usually fines, have meaning.

Specific steps being taken to enhance prosecutions and strengthen enforcement are:

- **Existing Crown Counsel charge approval policy will be retained but policy will be put in place immediately to provide for a review of charging decision at the request of enforcement agencies.**

  The Attorney General, through his agent, Crown Counsel, must retain the authority to decide what criminal charges will proceed. The Attorney General is ultimately accountable for the prosecution of the case.

  Policies and procedures will be put in place to allow a Chief Constable or officer in charge of a police detachment who is dissatisfied with a decision not to lay a charge to have that decision reviewed by senior Crown Counsel and ultimately the Deputy Attorney General.

- **Additional resources will be made available to Crown Counsel to ensure that they can effectively prosecute cases and meet the needs of victims and witnesses.**

  Crown Counsel offices are understaffed. The continued operation of a high quality, professional prosecution system requires adequate legal, paralegal and support staff.

  Of particular importance is the need for adequate staff time to familiarize witnesses with the trial process, the nature of the case and their role in it.

  Over the next three years, an additional $4 million will be spent for these purposes.

  The practice of engaging ad hoc Crown Counsel from the private bar will continue in appropriate cases.

- **Additional resources will be made available for Crown Counsel special prosecutions.**

  More prosecutors will be added to deal with complex and high profile cases, including those involving child sexual abuse, family violence, dangerous offenders and commercial crime. This will cost $2.2 million over the next three years.

  The Attorney General has instructed Crown Counsel that these areas be prosecuted vigorously and fairly.

- **Services and programs for victims will be expanded.**

  Twenty-one existing programs serving victims of sexual assault will be expanded and 10 new programs will be established to provide services in isolated and native communities.

  Five special wife assault programs will be established in communities to ensure effective coordination of justice and support services to victims of these crimes.

- **A pilot project based on the Montreal model of criminal court will be established in Vancouver.**

  The Montreal model includes court procedures which ensure full disclosure of the Crown's case and agreement on the issues in dispute early in the process. It is intended to streamline the criminal process, reduce the costs and inconvenience to witnesses, as well as the number and length of preliminary inquiries and trials.

A committee with representatives from the Judiciary, Crown Counsel and the defense bar is now working on developing procedures and making the necessary arrangements to begin operations in 1989.

The pilot project will be evaluated to determine if it should be implemented province-wide.

- **Committees of judges, Crown Counsel and members of the defense bar will establish rules for pre-trial motions in criminal courts.**

  The existence of such rules will provide standard procedures for pre-trial applications and avoid inconvenience for witnesses and jurors.

- **Diversion policies and programs will be evaluated and, if warranted, expanded.**

  Prior to any expansion of diversion programs, the adequacy of existing Crown diversion policy and community-based diversion programs will be assessed. This assessment is being undertaken jointly by the Ministries of Attorney General and Solicitor General.

- **Enforcement of municipal bylaw offences will be simplified.**

  Amendments to the Municipal Act and the Vancouver Charter will allow municipalities to use ticketing procedures similar to those available for provincial statute offences. They will allow for the voluntary payments of fines, without the need for a court appearance if the accused does not wish to dispute the alleged offence.

  Additional bylaw and traffic adjudicator courts (formerly known as "sitting justice of the peace courts") will sit on a trial basis in the North and the Interior. If successful, province-wide expansion will follow.

- **Enforcement of payment of fines for provincial statutes will be strengthened.**

  Amendment to the Offence Act will allow the Attorney General to prescribe higher fine levels in cases where people fail to voluntarily pay fines for tickets or to dispute the tickets on time.

  Pilot projects to test the desirability and effectiveness of using collection agencies for outstanding fines will begin in 1989.

FAMILY LAW

Family Law is one of the most complex and contentious legal areas.

The complexity derives, at least in part, from shared constitutional responsibility between the federal and provincial governments and the split jurisdictions of the Supreme and Provincial Courts. The Supreme Court can deal with all family matters, while the Provincial Court's jurisdiction is more limited. For example, it cannot deal with divorce cases.

The contentiousness is due to subject matter. As the Justice Reform Committee pointed out:

> "Probably no other area of the law is as many-sided or as emotionally-charged as the law which attempts to deal with the results of a broken marriage." and
>
> "The law is capable of very few more drastic steps than removing a child from its family. The Family and Child Service Act (FCSA) permits this to be done when a child is in need of protection."

In recent years, both levels of court have experienced significant increases in the number of family law matters involving child custody and access, family property and spousal and child support. Caseload pressures, split jurisdiction between the Provincial and Supreme Courts and the different procedures and practices between the two levels of court lead, too often, to frustration and confusion. The justice system must ensure the fair, certain and timely resolution of family disputes.

Specific steps being taken are:

- **A Green Paper to promote discussion on Family Court jurisdiction will be circulated in 1989.**

  The Justice Reform Committee proposed a model for the operation of the court system to overcome the jurisdictional problems created by split constitutional responsibilities. This model tried to preserve the broad geographic availability and summary procedures which are in place in the Provincial Court. During the detailed review of the proposal, questions were raised about whether it satisfactorily addresses either the problems respecting split jurisdiction or the objective of improving accessibility to the courts.

  Following receipt of the Committee's report, the Attorney General and his staff undertook extensive consultation with family law practitioners and judges in an attempt to find alternative solutions to identified problems. While consensus was reached on the nature of the problems and some possible solutions were

suggested, it was concluded that specific proposals should be developed and put forward for further discussion along with the recommendations made by the Justice Reform Committee.

Later this year, the Attorney General will issue a Green Paper on Court Jurisdiction and Procedures in Family Law Cases. The preparation of that Green Paper will involve consultation with other affected Ministries, the Attorney General's advisory committee, the Judiciary and family law practitioners. The resulting legislative amendments will be introduced in the Spring of 1990.

- **Family Law legislative amendments are being introduced in 1989**

These amendments will:

- provide that British Columbia residents who have maintenance orders under the Divorce Act from another province will be able to file them with the Family Maintenance Enforcement Program for enforcement;
- broaden the power of the court to make attachment orders for the payment of maintenance;
- provide that investigative reports prepared for the court in child custody and access matters be served 30 days before the court hearing to give parties time to respond;
- ensure the Court has broader authority to restrain a spouse from disposing of assets prior to the division of property on marriage breakdown;
- ensure that arrears under a maintenance order will be cancelled by the court only in extraordinary circumstances;
- provide that separation agreements may be filed for enforcement in the Supreme Court;
- permit rules requiring the disclosure of financial information by a party in proceedings under Part III of the Family Relations Act including interests in a corporation or partnership.

Further amendments will be introduced during the current session of the legislature in relation to:

- enhanced disclosure of financial information, including interests in a corporation or partnership, under section 60 of the Family Relations Act;

– disclosure of information by the Superintendent of Family and Child Services in child apprehension proceedings under the Family and Child Services Act. (This will be an exposure bill.)

- **All Justice Reform Committee recommendations regarding the apprehension of children will be addressed by the Minister of Social Services and Housing in a review of the Family and Child Services Act.**

  Given that review, it is premature to address the Committee's recommendations at this time.

- **Family property matters will be referred to the Law Reform Commission of British Columbia.**

  As recommended by the Justice Reform Committee, the Law Reform Commission is being asked to review the principles upon which family property is shared by spouses or former spouses. In addition, the Commission already has under review the matter of splitting pension benefits between spouses or former spouses.

  Legislative action on these matters will await the reports of the Law Reform Commission.

- **Legal assistance is provided in family matters.**

  The Legal Services Branch of the Ministry will continue to appoint Family Advocates in all cases where the interest and welfare of the child requires separate representation.

  Measures to increase the availability of legal aid are discussed in the next section, "Helping People with Special Needs."

- **Family court facilities will be improved.**

  Over the next five years, separate waiting areas and private interview rooms will be constructed in all Family Court locations currently lacking such facilities. This will permit citizens using Family Court to resolve disputes while preserving dignity and privacy.

- **Plain language Family Court Rules will be introduced.**

  Rules for family court will be developed in plain language and designed for unrepresented litigants.

  The rules will permit trial scheduling outside the courtroom without requiring the parties to be present.

HELPING PEOPLE WITH SPECIAL NEEDS

The justice system must serve all British Columbians. Cultural and language differences, physical and mental disabilities, and lack of money can be barriers to justice. A mainstream justice system must be tailored to address these special needs so that all British Columbians are well served.

The following steps are being taken:

- **Court facilities and services will be improved.**

  A five year capital program will result in all court houses being accessible to physically disabled people.

  Court reporting technology will be designed to assist the hard of hearing in the courtroom.

- **Justice needs of native people will be identified and appropriate responses implemented and tested.**

  Immediate consultations will take place with Elders, band councils, native communities and organizations to determine how justice services can be tailored to make them more accessible and useful to native people. These consultations will include the Ministries of Solicitor General and Native Affairs.

  Based on these consultations, pilot projects will be established in such areas as diversion, alternate sentencing measures, family mediation, and family court services. Also beginning in 1989, funding will be increased for native courtworkers.

  A committee of the Judiciary, court staff and native representatives will develop a strategy for regular court sittings on reserves and will assess the impact of this program.

  These initiatives will be funded by an additional $2.5 million over three years.

  The Ministry of Solicitor General will continue to develop institutional programs which are sensitive to native inmates.

- **The Ministry of Health will address the legal rights of mental health patients.**

  The Ministry of Health has recently amended the Mental Health Regulations in order to advise involuntarily admitted patients in mental health facilities of their rights respecting their detention.

  The Ministry of Health will ensure that a study is conducted on the rights of patients under the Mental Health Act and their families to participate in decisions about their treatment.

- **Public legal educational services will be designed to reach members of the multicultural community and disadvantaged groups.**

  As part of the planned public legal education program expansion, multilingual speakers, materials, videos and law camps will be provided for diverse cultural groups. A special program is being developed to address legal information needs of those people in urban centres who are particularly disadvantaged in accessing available resources.

The 1984 Task Force Report on Legal Aid made a variety of recommendations regarding levels of service and renumeration. Many of these recommendations have already been implemented in whole or in part and in some cases they have been exceeded. More remains to be done.

The priority for increased services is to help more individuals obtain legal representation on their specific case. Accordingly, additional government funding is being directed to increase the number of individuals who may be helped through legal aid. Therefore, groups seeking to launch charter challenges should, for the time-being, continue to look to community sources for funding.

- **Increased legal aid funding will allow for expanded services.**

  Duty counsel will be available in all criminal courts and a rate increase will be provided effective October, 1989.

  The availability of family legal aid will be increased by using a more flexible financial eligibility test effective April 1, 1990.

  The availability of criminal legal aid will be increased by using a more flexible financial eligibility test effective April 1, 1990.

  More people will be helped in civil law matters through an additional $500,000 next fiscal year for community legal aid offices. Much of the work in this area is in connection with administrative tribunals. Before any further funds are committed, the public information and procedures related to these tribunals will be reviewed and where possible simplified so that the need for people to be represented by lawyers in this area can be reduced.

  An increase of 5% in the tariff will be implemented effective October, 1989. Further, a review of the renumeration paid to lawyers who perform work for Crown Counsel, Legal Services Society, Legal Services Branch and the private sector will be completed by July, 1989. Further changes to the tariff will be addressed during the normal budget process and based on the findings of this review.

TECHNOLOGY, EVALUATION AND MANAGEMENT INFORMATION

Some aspects of court administration have been automated in British Columbia since the mid 1970's. Most procedures remain manual. A major task of court administrative personnel is to process and keep track of forms, files, documents, court orders, transcripts, judicial decisions and money.

The application of computer-based technologies has significantly affected the way people deal with many institutions such as banks and retail businesses. The introduction of new technologies into the court process has been slow. The justice system must explore and introduce new technologies to improve access and increase efficiencies. This was a major theme of the Justice Reform Committees' Report.

A second major theme was the importance of evaluation and reliable information to the proper management of the justice system. This evaluation must be applied to the reforms being introduced and the ongoing operations of the system.

Steps to be taken are:

- **A long-term strategic plan for the introduction of new technologies will be completed in 1989.**

  The Ministry's existing systems plan must be changed to reflect the major structural changes being introduced and the Justice Reform Committee's specific recommendations regarding the introduction of new technologies. The strategic plan will address:

  - improved access to the courts and their registries for the public and the bar,
  - improved services to the public, especially the hearing impaired,
  - improved control of the justice system through the development of management information systems, and,
  - improved access to government legislation and regulations.

- **Feasibility studies regarding electronic filing of documents, a central judgement registry and a decision database will begin in 1989.**

  The potential cost savings to taxpayers and litigants from the electronic filing and storage of court documents is significant, as are the technical and legal problems to be overcome.

  A central judgement registry will facilitate the enforcement of court judgements and remote access to such a database would be provided.

Similarly remote access to the text of judicial decisions will facilitate the dissemination of those decisions to the bar.

These areas are being incorporated within the Ministry's overall plan.

- **Pilot projects for the facsimile filing of documents and a computer integrated courtroom will begin in 1989.**

  Facsimile filing of documents will increase access to court registries and reduce costs to litigants, particularly in remote areas of the province.

  The computer integrated courtroom will include computer assisted transcript production, of use to trial participants and the hearing impaired.

- **Remote electronic access to Government data bases will be implemented.**

  Remote computer access to the Land Title data base will be available throughout the province in July. This access will be provided by B.C. OnLine and will include the Central Registry of Liens and the Companies Register.

  Continued development of technology will be applied in Land Titles so that supporting documentation can be retrieved remotely and private sector conveyancing costs can be reduced.

  As well, remote access to a statute data base and a regulations data base will improve access to the law.

- **Design of a management information system will begin in 1989.**

  A management information system is essential to monitoring the operations of the justice system. It must be designed in concert with operational systems and take account of the information requirements of the bench and the bar.

- **Attorney General's advisory committee will have an ongoing role in evaluating the implementation of these reforms.**

  Consultation with the private bar and the Judiciary is critical to the implementation and evaluation of the reforms described in this paper. In addition, procedures will be established to ensure that the justice system is subject to ongoing assessment and evaluation.

  The implementation of adequate management information and financial systems will greatly facilitate monitoring and evaluating the system.

- **The effect of Alcohol and Drug abuse on the Justice System will be studied.**

  The Attorney General is assisting university researchers in developing a proposal to collect information on the role that drugs and alcohol play in criminal, civil and family cases. The study is expected to be funded by grants from the Ministry of Labour and Consumer Services.

- **The feasibility of providing information on the costs of supporting a child will be examined.**

  The Attorney General is studying the subject of costs of raising a child to determine what information can be developed to assist judges and lawyers involved in Family Law litigation.

FEES AND COSTS

For many British Columbians the costs associated with legal processes are becoming a barrier to justice. The great majority of lawyers charge fees that are moderate and reasonable and, in fact, many often subsidize their client's cases either by advancing money from their own funds to cover expenses related to litigation or by reducing their fees. Lawyers who take legal aid cases do so for a modest fee and in some cases for no fee at all.

Nevertheless, on occasion, overcharging does occur. This is not in the best interest of the public and it also hurts the reputation of the legal profession. Both the courts and the Law Society have a role to play in ensuring that people do not pay unreasonable fees. The Law Society is able to discipline lawyers who charge unreasonable fees and Court Registrars are able to review the bills and lower the amount that is being charged.

Steps being taken to strengthen the protection of the public are:

- **Amendments to the Legal Professions Act respecting legal fees will be introduced in 1989.**

  Amendments will define in statute those factors to be used by a Court Registrar when reviewing a lawyer's bill to his or her client. This will increase certainty in the minds of the profession and the public as to what rules apply to such reviews.

  Additional amendments will make clear that the Law Society has the authority to establish a maximum schedule of fees which can be charged by lawyers on contingency agreements. It is understood that a maximum schedule will be established in 1989.

It is a basic principle in law that a person who wins a lawsuit should recover a portion of the costs of the suit. This is because the absence of cost recovery leads to excessive litigation and penalizes those who are the subject of frivolous or vexatious lawsuits. At the same time, one hundred percent cost recovery would discourage apparently valid lawsuits for fear that the suit would be unsuccessful.

The objective is to strike a fair balance between the extremes, that is, to compensate the winning party without discouraging access to the civil courts. At present, the balance in British Columbia requires some adjustment in favour of those who win law suits.

Steps being taken to improve the awarding of costs are:

- **Amendments to the Rules of Court will increase the fees recoverable by successful litigants in lawsuits.**

  The tariff of costs will be adjusted so that a person who wins a lawsuit will be able to recover approximately 50 percent of his or her actual and reasonable costs.

Rules will be developed to ensure that a person who is forced to go to additional expenses to enforce or collect a judgement after winning a lawsuit is entitled to compensation for the additional costs of enforcement or collection.

CASE MANAGEMENT

The continuing growth in civil litigation is putting considerable pressure on the court system. The complexity of court processes and the ability of wealthy litigants to introduce expensive procedural tactics contribute to the rising cost of civil litigation.

The vast majority of cases do settle before they ever get to trial, but often not until very late in the process and at great cost. Last minute settlements, particularly of cases expected to last several days, also create problems in court scheduling.

- **The Supreme Court Rules govern the procedures and are designed to promote earlier disclosure of information and more expeditious case management. They will be changed by the Supreme Court Rules Committee to include:**
  - the introduction of a new form of certificate of readiness to be filed within 60 days of the agreed trial date for trials scheduled to last 10 days or more;
  - a requirement to file an agreed case management program for cases scheduled to last 10 days or more;
  - providing the judge with the power to order a plan to ensure that examinations for discovery will be expedited;
  - a mandatory requirement that an affidavit of documents be delivered within a specified time;
  - providing the judge with the power to order meetings for expert witnesses to determine areas of agreement;
  - a provision that when a judge has been extensively involved in the pre-trial management of litigation that judge will not hear the trial unless all counsel agree;
  - expert opinions to be exchanged earlier for trial cases with trial dates of 10 days or more while in other cases the present 30 day rule will remain.
- **A practice directive will be issued by the Judiciary listing the applications that can be made by desk order.**

  A desk order is an order made by a Registrar where both parties to a lawsuit agree on the matter.
- **Rules will be clarified with respect to settlement conferences and mini-trials intended to encourage settlement.**
- **The Supreme Court Rules committee is examining the specifics of how best to address the Justice Reform Committee's recommendations about interrogatories, notices to admit facts and statements of agreed facts.**

ONGOING LAW REFORM

The Province is constitutionally responsible for the vast majority of civil law in British Columbia.

The Attorney General has specific responsibility for statute law as it relates to civil court structures and procedures, the prosecution of provincial statutes, family law, the financial affairs of persons unable to manage themselves and the registration of title to land.

The Attorney General is also responsible for the Law Reform Commission of British Columbia which provides advice on the reform of the Province's statute law.

The reform of law is an on-going process. The Justice Reform Committee made a number of recommendations relating to that process. Specific steps being taken are:

- **A new Court Rules Act will be introduced in 1989.**

  There are at least nine different statutes which give authority to make rules of practise and procedures for the courts. The provision of these Acts will be consolidated in a single Court Rules Act.

- **A Structured Settlement and Periodic Payments Act will be introduced in 1989.**

  A new Act to clearly give a judge the authority to order that an award of damages be paid over a period of time, rather than in a lump sum, will be introduced later in the current legislative session.

  For the very young and for those suffering catastrophic injuries, structured settlements can provide better long term security than can a single lump sum payment.

- **Additional matters will be referred to the Law Reform Commission.**

  Limitation Act – assessment of the merits of special limitation periods under the Limitation Act be undertaken, to assist the Government in resolving exemption proposals by various professional groups.

  Patients Property Act – issues associated with the management of affairs of incompetent persons, specifically those involving the concept of "enduring power of Attorney" will be reviewed.

  Municipal Act – re-examine its 1974 Report on Limitations which recommended repeal of the 60 day notice provision regarding injury or loss where a suit is planned.

Insurance Act – study and report on reforms respecting claims for losses due to interruption of business.

- **The Government of Canada will be asked to take legislative action.**

Interest Act (Canada) – repeal of sections of this Act is being requested so that British Columbia's Court Order Interest Act, 1982 can be proclaimed and the rate of postjudgement interest payable in the Province set under Provincial law.

Criminal Code – the Ministry will consult with other provinces on recommended changes regarding increased jurisdiction for the Provincial Court in criminal matters. If there is a consensus on this proposal, a recommendation for amendment will be made to the federal government.

SHARED RESPONSIBILITY

A successful justice system that meets the needs of citizens throughout British Columbia requires the commitment of all who labour in its service.

Such dedication has long been a hallmark of the justice system in British Columbia – a system that, today, involves judges, lawyers, court staff, university law faculties and volunteer organizations. It is these people, along with participation of the Law Society, the Legal Services Society, the Law Foundation and the Canadian Bar Association, who have provided British Columbians with a justice system they can use and trust.

Many of the recommendations in the Justice Reform Committee's report Access to Justice are addressed to these individuals and groups – all of whom share responsibility for ensuring the justice system continues to serve the people of British Columbia.

It was the Justice Reform Committee's belief that meaningful reform will be achieved only through active participation and whole-hearted commitment of people from every sector of the justice system.

All justice-related groups responded positively to the report's call for change and also expressed a strong willingness to become directly involved in creating a system that truly meets the needs of all people.

The justice reforms currently being initiated by government will provide the mechanism for these individuals and groups to make a good justice system even better.

By working together in the process of change and continuing evaluation, we will establish a justice system that is truly accessible and responsive to all British Columbians.